

ORIGINAL

FILED
2006
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

COMBUSTION SERVICES, INC.,

Plaintiff

v.

S & H EXPRESS, INC., S & H
TRANSPORT, INC., B & M
TRUCKING, and LARRY
EDWARDS

Defendants

4 : CV - 06 - 2416

NO.

CIVIL ACTION - LAW

JUDGE

JURY TRIAL DEMANDED

PETITION FOR REMOVAL

Defendants Brennen Moore Trucking, Inc., sued herein as B&M Trucking ("B&M Trucking"), and Larry Edwards (collectively, the "B&M Defendants"), pursuant to 28 U.S.C. § 1441 et seq., hereby file this Notice of Removal to the United States District Court for the Middle District of Pennsylvania and state as follows:

1. Plaintiff Combustion Services, Inc. ("Plaintiff") initiated this action by filing a Complaint on July 13, 2006 in the Court of Common Pleas of York

County, Pennsylvania, under the caption Combustion Services, Inc. v. S&H Express, Inc. et al., Docket No. 2006-SU-2228-Y01. A copy of the Complaint is attached hereto as Exhibit A.

2. On or about December 6, 2006, less than thirty days before the filing of this Notice, the B&M Defendants' first received notice of an Amended Complaint in this action, which was filed in the Court of Common Pleas, York County, Pennsylvania. A copy of the Amended Complaint is attached hereto as Exhibit B.

3. The Amended Complaint seeks to recover damages allegedly sustained by Plaintiff's Air Heater, which Plaintiff claims to have tendered to one or more of the Defendants for transportation by motor truck from York, Pennsylvania to Wylie, Texas. See Exhibit B, Amended Complaint, paragraphs 9-14.

4. The Amended Complaint further alleges that the damage to the Air Heater was allegedly sustained while in the course of transportation from York, Pennsylvania, to Wylie, Texas. See Exhibit B, Amended Complaint, paragraph 17.

5. Count I of the Amended Complaint alleges that one or more of the Defendants are liable to Plaintiff based on 49 U.S.C. § 14706 (the "Carmack Amendment") for the alleged damage to the Air Heater. See Exhibit B, Amended Complaint, paragraphs 23- 31.

6. The original Complaint did not contain a Count against the Defendants asserting liability based upon the Carmack Amendment. See Exhibit A, Complaint.

7. All claims for loss or damage to cargo transported in interstate commerce are governed by the Carmack Amendment. See 49 U.S.C. § 14706(a)(1).

8. This Court has original jurisdiction of this action under 28 U.S.C. § 1337 because it arises under an Act of Congress regulating commerce, namely, the Carmack Amendment, and because the matter in controversy exceeds \$10,000, exclusive of interest and costs. Accordingly, this action is removable to this Court pursuant to the provisions of 28 U.S.C. §§ 1331, 1337(a) and 1441(a) and (b).

9. Because the Middle District of Pennsylvania encompasses York County, in which this action was filed, this action is properly removable to this Court.

10. Plaintiff first asserted its claim under the Carmack Amendment in the Amended Complaint. Plaintiff did not assert a claim under the Carmack Amendment in the original Complaint. As it is less than thirty days since Plaintiff first asserted a federal cause of action, via the Amended Complaint, removal is timely pursuant to 28 U.S.C. § 1446(b).

11. Defendant S&H Express, Inc., through its counsel, has consented in writing to the removal of this action to this Court. A copy of S&H Express, Inc.'s Consent to Removal is attached hereto as Exhibit C.

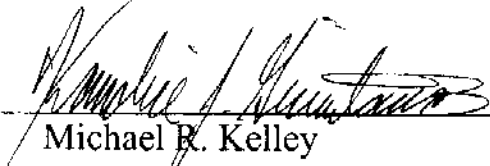
12. Defendant S&H Transport, Inc., through its counsel, has consented in writing to the removal of this action to this Court. A copy of S&H Transport, Inc.'s Consent to Removal is attached hereto as Exhibit D.

13. A copy of this Notice of Removal is being filed with the Court of Common Pleas, York County, Pennsylvania and served upon all adverse parties in accordance with 28 U.S.C. § 1446(d).

14. Copies of all of the pleadings, process, and orders received by the B&M Defendants in this action are attached hereto as Exhibit E (other than the Complaint and Amended Complaint, which are attached as Exhibits A and B, respectively).

WHEREFORE, Defendants Brennen Moore Trucking, Inc. and Larry Edwards remove this action to the United States District Court for the Middle District of Pennsylvania.

McNEES WALLACE & NURICK LLC

By 
Michael R. Kelley
I.D. No. 58854
Kandice J. Giurintano
I.D. No. 86345
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
(717) 232-8000

Andrew Karonis
Schindel, Farman & Lipsius, LLP
14 Penn Plaza, Suite 500
New York, NY 10122
Tel: (212) 563-1710 ext. 235
Fax: (212) 695-6602

Dated: December 18, 2006

*Attorneys for Defendants B&M Trucking
and Larry Edwards*

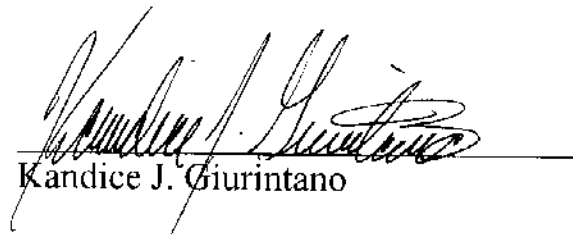
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a true and correct copy of the foregoing document was served by first-class mail, postage prepaid, upon the following:

Thomas S. Brumbaugh, Esquire
Thomas, Thomas & Hafer, LLP
305 North Front Street
P.O. Box 999
Harrisburg, PA 17108

James A. Wescoc, Esquire
Rawle & Henderson LLP
The Widener Building
One South Penn Square
Philadelphia, PA 19107

Robert J. Foster, Esquire
Reger Rizzo Kavulich & Darnall, LLP
Cira Centre, 13th Floor
2929 Arch Street
Philadelphia, PA 19104-2899



Kandice J. Giurintano

*Counsel for Defendants B&M
Trucking and Larry Edwards*

Dated: December 18, 2006

Court Name: Pennsylvania Middle
Division: 1
Receipt Number: 111000325
Cashier ID: chatcher
Transaction Date: 12/18/2006
Payer Name: MCNEES WALLACE MURICK LLC

CIVIL FILING FEE
For: MCNEES WALLACE AND MURICK LLC
Amount: \$350.00

CHECK
Check/Money Order Num: 60-1273/313
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

Only when bank clears the check or
verifies credit of funds is the fee
or debt officially paid or
discharged. A fee of \$45.00 will be
charged for returned checks.